THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.1153 of 2007

Date:15.11.2007

Between:
Addipally Rama Krishna Gupta and 19 others.

...
Petitioners

AND
Government of Andhra Pradesh, reptd., by its Secretary, Revenue (Land Acquisition) Department, Secretariat, Hyderabad and two others.

... Respondents.

Counsel for the petitioners: Sri V.V.L.N.Sarma.

Counsel for the respondents: Govt. Pleader for Land Acquisition.

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HONOURABLE MR.JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.1153 of 2007

ORDER:-

This Writ Petition is filed for a Writ of Mandamus to declare Notification dated 30-8-2006 issued under Section 4(1), Declaration dated 27-12-2006 issued under Section 6, and Notice dated 5-1-2007 issued under Sections 9(3) and 10 of the Land Acquisition Act, 1894 (for short "the Act"), as illegal and arbitrary.

The petitioners claim to be the owners of Ac.18.08 cents of land in Survey Nos.344/1B, 345/1A, 346, 360/2 and 361/2 situated in Kaikaluru village and Mandal, Krishna District. Draft notification dated 25-8-2006 was published in Krishna District Gazette on 30-8-2006 and declaration under Section 6 of the Act was published in the Gazette on 30-12-2006 after completion of the enquiry under Section 5-A of the Act. On receipt of the notices under Sections 9(3) and 10 of the Act, the petitioners filed the present Writ Petition questioning these proceedings.

Sri V.V.L.N.Sarma, learned counsel for the petitioners, submitted that though the petitioners have participated in the enquiry held under Section 5-A of the Act, respondents 2 and 3 have not communicated the order by which they purported to have over-ruled the objections filed by the petitioners. He also submitted that the lands, which are proposed to be acquired, are being used as fish tanks and that they are not suitable for being used a house sites. He drew my attention to Form-7 Notice issued under Sections 9(3) and 10 of the Act to show that the

said notice was signed by respondent No.3 on 6-1-2007 and he has pointed out from the counter-affidavit, in which it is stated that the declaration under Section 6 was published in the District Gazette on 30-12-2006, in the vernacular news paper on 6-1-2007, in the English daily news paper on 8-1-2007 and in the locality on 9-1-2007. He, therefore, submitted that notice issued under Section 9(3) and 10 of the Act is invalid as it was prepared with a pre-conceived notion even before publication of declaration under Section 6 of the Act was complete.

The learned Government Pleader for Land Acquisition per contra submitted that after hearing the petitioners' objections in person, and considering their objections submitted in writing, respondent No.3 (Revenue Divisional Officer, Gudiwada) submitted her report to respondent No.2 (District Collector, Krishna), who over-ruled the objections of the petitioners and communicated the same through an endorsement to them. With regard to Form No.7 notice, the learned Government Pleader, however, does not dispute that the same bears the date 6-1-2007.

As regards the validity of Section 4(1) notification, the learned counsel for the petitioners failed to point out any legal infirmity with respect thereto. From the averments of the counter-affidavit, it is clear that the said notification was published in the District Gazette as well as in the two news papers, apart from the substance having been published in the locality as required by law.

Insofar as the enquiry under Section 5-A is concerned, the petitioners, admittedly, participated in the enquiry and put-forth their objections, both oral and in writing. Whether the

objections were communicated by respondents 2 and 3 to the petitioners is the subject matter of dispute. As no date has been given in the counter-affidavit nor the respondents have showed any proof in support of the contention that the objections were communicated, I am prepared to accept the contention of the learned counsel for the petitioners that the objections were not communicated to the petitioners. Therefore, the respondents are directed to communicate the said order, by which respondent No.2 is stated to have rejected the objections raised by the petitioners against the proposed acquisition. This would enable the petitioners to question the said order in appropriate proceedings, if they so desire and are so advised.

I find substance in the contention of the learned counsel for the petitioners that Form-7 notice issued under Section 9(3) and 10 of the Act suffers from a fundamental defect. Under Section 6(2) every declaration shall be published in the Official Gazette or the District Gazette and in two daily news papers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality. By the Andhra Pradesh Amendment Act 22 of 1976 it is provided that the last of the dates of such publication and the giving of such public notice, shall be treated as the date of publication of the declaration. Sections 7 and 8 envisages the steps to be taken, after publication of declaration, by the Collector to make appropriate order for acquisition of the land and measuring and planning etc. Under Section 9, after completion of the formalities indicated in Sections 7 and 8 of the Act, the Collector shall then

cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. Under sub-Section (3) of Section 9, the Collector shall also serve notice to the same effect on the occupier of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested. Under Section 10 of the Act the Collector shall issue notice to such persons to make or deliver to him, at a time and place mentioned, a statement indicating the interest he possesses in the property under acquisition.

The words “the Collector shall then cause public notice” used in Section 9 are very significant because under the Scheme of the Act the stage for issuing notices under Section 9 would commence only after completion of the formalities envisaged in Sections 6(2), 7 and 8 of the Act. It is categorically stated in the counter-affidavit that the last of such publications under Section 6 was made by publishing the substance in the locality on 9-1-2007. Therefore, by operation of the above-mentioned provisions, it cannot be said that till 9-1-2007 there is a valid declaration under Section 6. The learned Government Pleader has not disputed that Form-7 notice issued under Sections 9(3) and 10 of the Act was signed on 6-1-2007 itself i.e., three days before publication of the last of the notices under Section 6. I am, therefore, of the view that this notice issued under Sections 9(3) and 10 of the Act suffers from a legal defect being contrary to the provisions of Sections 6,7,8 and 9 of the Act.

For the aforementioned reasons, the notice issued under Sections 9(3) and 10 of the Act is quashed. Respondents 2 and 3 are directed to furnish a copy of the order, by which the petitioners' objections were rejected, within two weeks from today. The petitioners shall not be dispossessed from the lands in question for a period of one month from today.

Subject to the above observations, the Writ Petition is disposed of.

C.V.NAGARJUNA REDDY,J
15-11-2007

MNR